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TARRANT COUNTY TEXAS  
OIL, GAS AND MINERAL LEASE**

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SHARVINE HENDERSON  
COUNTY CLERK

THE STATE OF TEXAS  
COUNTY OF TARRANT

This Oil, Gas and Mineral Lease (this "Lease") is made and entered into on this 6th day of October, 2008 (the "Effective Date") by and between the Costco Wholesale Corporation, a Washington corporation, whose address is 999 Lake Drive, Issaquah, Washington 98027 (hereinafter referred to as "Lessor") and Vargas Energy, Ltd., a Texas Limited Partnership by Plover Production Company, whose address is 4200 S. Hulen, Suite, 614, Fort Worth, Texas, 76109 (hereinafter referred to as "Lessee").

**1. GRANTING CLAUSE**

Lessor, in consideration of Ten Dollars (\$10.00) in hand paid, of the royalties herein provided and of the covenants and representations of Lessee herein contained, hereby Grants, Leases and Lets exclusively unto Lessee for the sole and only purposes of investigating, exploring, prospecting, drilling and operating for, and producing, oil, gas and all other liquid or gaseous minerals (including sulfur produced as a component of oil and gas) from the real property described in Exhibit A attached hereto (the "Leased Premises") (such oil, gas, and/or liquid and/or gaseous minerals produced from the Leased Premises or lands pooled therewith being herein collectively referred to as the "Minerals"), subject, however, to all of the terms, conditions, provisions, covenants, and obligations of Lessee under this Lease. This lease also covers and includes all mineral interest in land owned or claimed by Lessor which is located in streets, roads, alleys, easements and rights of way contiguous to the Leased Premises. All mineral rights other than the Minerals are expressly reserved to Lessor. These reserved mineral rights include the rights to lignite, coal and sulfur not produced as a component of oil and gas.

For the purpose of determining the amount of any bonus or other payment hereunder, said Leased Premises shall be deemed to contain 19.0 acres, whether actually containing more or less.

**2. PRIMARY TERM**

Simultaneously with the execution of this Lease and as a condition to the existence of this Lease, Lessee shall make a total bonus payment to Lessor in immediately available funds of United States currency, by wire transfer to Lessor's bank account, in the amount of Twenty-Five Thousand Five Hundres and No/100 Dollars (\$25,500.00) per acre. Lessee's failure to make such payment shall, at the option of Lessor and without notice from Lessor to Lessee, result in the immediate termination of this Lease in its entirety. Subject to the other provisions herein contained, this Lease shall be for a term of three (3) years from the Effective Date (hereinafter called "Primary Term") and so long thereafter as Minerals are produced from the Leased Premises or lands pooled therewith, in paying quantities, or drilling operations are in progress thereon as hereinafter provided, and the royalties are paid as provided herein. Lessee agrees to obtain all governmental approvals and permits required in order to allow the exploration and production of the Minerals. Lessor agrees to cooperate with Lessee and participate to the extent reasonably necessary to assist Lessee, but at Lessee's sole cost and expense, in obtaining all governmental approval and permits necessary to allow the exploration and production of the Minerals.

**3. DELAY RENTALS**

No delay rentals are due hereunder.

#### 4. POOLING

Other than as provided in this Section 4, Lessee shall have no right to pool or combine any portion of the Leased Premises with other lands without first obtaining the prior written consent of Lessor. Lessee may pool as follows:

A. Entire Leased Premises. Lessee may pool so long as one hundred percent (100%) of the Leased Premises are included in the pooled unit.

B. Pooled Unit Size. No pooled unit shall be larger than the minimum number of acres required to obtain approval of the drilling unit size applicable to a well under the applicable density rules adopted by a governmental authority having jurisdiction, provided, however, and notwithstanding anything contained herein to the contrary, for gas wells completed in the Barnett Shale formation, the pooled unit (i) for a well which is not a Horizontal Well may be as large as, but shall not exceed, forty (40) acres and (ii) for Horizontal Wells may be as large as, but shall not exceed, three hundred twenty (320) acres. As used in this Lease, the term "Horizontal Well" means any well that is drilled with one or more horizontal drainholes having a horizontal drainhole displacement of at least 100 feet, provided and so long as such well also constitutes a "horizontal well" as defined in Statewide Rule 86, as promulgated by the Texas Railroad Commission.

C. Recordation of Pooled Unit Declaration. In the exercise of its pooling rights hereunder, Lessee shall file of record in the Official Public Records of Tarrant County, Texas a written declaration describing the unit and stating the effective date of pooling (which effective date in no event can be more than thirty days prior to the date of filing). Lessee shall promptly provide Lessor a copy of such recorded written declaration. Lessee may file such declaration at any time while this Lease is in effect and whether before or after production has been established on the pooled unit lands.

D. Termination of Pooled Unit. Upon termination of the pooled unit, Lessee must file of record in the Official Public Records of Tarrant County, Texas a written instrument declaring the dissolution of said pooled unit.

E. Allocation of Pooled Unit Production. In the event of such pooling, subject to other terms and provisions contained in this Paragraph 4.E, there shall be allocated to the land covered by this Lease within such pooled unit that proportion of the total production from the producing well applicable to such pooled unit which the number of surface acres in such land covered by this Lease within such pooled unit bears to the total number of surface acres in such pooled unit; provided, however, (i) if less than all Mineral interests in the lands included in such pooled unit are pooled as a part of such pooled unit, Lessor's proportionate pooled unit royalty share on production from such pooled unit shall nevertheless be calculated and paid based on one hundred percent (100%) of the production from the well that is applicable to such pooled unit and (ii) if less than all Mineral interests in any non-drillsite tract (being a tract in the pooled unit on which there is not located a producing well bottomhole or horizontal drainhole applicable to such pooled unit) have been pooled and unitized as a part of such pooled unit, as to the pooled unit participation percentage basis of such non-drillsite tract, Lessor's royalty shall be calculated on the number of net mineral acres in such non-drillsite tract committed to such pooled unit (as opposed to the gross surface acres of such non-drillsite tract included in such pooled unit). For purposes of Section 4 of this Lease, the term "net mineral acres" means, with respect to any tract, the product of (a) the number of gross acres in the tract and (b) the fraction of the Mineral estate in such tract committed to such pooled unit. If any non-unitized mineral interest in a non-drillsite tract included in the pooled unit is later added to such pooled unit, by amendment, ratification or otherwise, then the allocation provided herein and the royalties payable hereunder shall be adjusted to take into account the additional net mineral acres added to such pooled unit, effective as of the date of amendment or ratification of the unit.

F. Outstanding Royalty Interests. If there are royalty interests in Minerals in the Leased Premises now owned by parties other than Lessor and if pooling occurs, Lessor makes no warranty or representation that this Lease grants Lessee the power or authority to pool such royalty interests, but in the event of pooling

hereunder, Lessor's royalty on production from the pooled unit shall be calculated and paid as if Lessee had the power, and had exercised the power, to pool such royalty interests, whether or not Lessee in fact has such authority.

#### 5. CESSATION OF PRODUCTION, REWORKING AND CONTINUOUS DRILLING OF WELLS

In the event production of Minerals from the Leased Premises or lands pooled therewith, once obtained, shall cease for any cause within ninety days before the expiration of the Primary Term of this Lease or at any time or times thereafter, this Lease shall not terminate (i) if Lessee commences reworking operations within sixty (60) days thereafter, and this Lease shall remain in full force and effect so long as such operations continue in good faith and in a workmanlike manner without an interruption totaling more than sixty (60) days; and if such reworking operations result in the production of Minerals, this Lease shall remain in full force and effect so long as Minerals are produced therefrom in paying quantities or shut-in payments are tendered to Lessor as provided herein, or as may otherwise be provided for in this Lease, or (ii) if production in paying quantities is restored within sixty (60) days after such cessation.

#### 6. CONTINUOUS DEVELOPMENT

A. Extension of Primary Term. Notwithstanding any provision contained herein to the contrary, whether or not Minerals are being produced on the Leased Premises or on lands pooled therewith at the expiration of the Primary Term, if Lessee (i) is engaged at the expiration of the Primary Term in drilling or reworking operations on the Leased Premises or lands pooled therewith or (ii) has completed a well either as a dry hole or as a producer on the Leased Premises or on lands pooled therewith within sixty (60) days before the expiration of the Primary Term, the Primary Term of this Lease shall be extended and remain in full force and effect as to all of the Leased Premises for so long as operations for drilling are conducted on the Leased Premises or lands pooled therewith with no more than sixty (60) days elapsing between the completion or abandonment of one well and the commencement of actual drilling operations of another well. Upon the expiration of such extended Primary Term, this Lease shall terminate as to: (1) all lands which are not included within a proration unit established by Lessee and approved by the Railroad Commission of Texas applicable to each producing well located on the Leased Premises or on lands pooled therewith (it being understood that each such proration unit shall contain no more acreage than the minimum number of acres required to obtain approval of the drilling unit size applicable to a well under the applicable density rules adopted by a governmental authority having jurisdiction, provided, however, and notwithstanding anything contained herein to the contrary, for gas wells completed in the Barnett Shale formation, each such proration unit (i) for a well which is not a Horizontal Well may be as large as, but shall not exceed, forty (40) acres and (ii) for Horizontal Wells may be as large as, but shall not exceed, forty (40) acres plus the additional acreage listed in the table in Statewide Spacing Rule 86 of the Railroad Commission of Texas for fields with a density rule of greater than 40 acres ) and (2) all depths and horizons 100' below the stratigraphic equivalent of the base of the deepest formation producing or capable of producing Minerals in paying quantities, in each well which is included within the boundaries of such proration unit. After the expiration of the Primary Term, as extended if applicable, (i) Lessee shall release all of the Leased Premises not otherwise held hereunder (ii) this Lease as to each proration unit held by a producing well shall be considered a separate Lease from the lease covering any other such proration units, so that this Lease shall, thereafter, as to each such proration unit, remain in force as to each such proration unit only so long as oil or gas is produced from such proration unit or the lease as to such proration unit is maintained in force under some other provision of this Lease and (iii) if the deepest depth producing oil or gas in paying quantities in a well ceases to produce oil or gas in paying quantities, and Lessee obtains production of oil or gas in paying quantities from a depth that is closer to the surface than said deepest depth, all depths below 100 feet below such depth which is closer to the surface shall be released from this Lease, it being intended that after the expiration of the Primary Term, as extended if applicable, this Lease shall never cover any subsurface depths below 100 feet below the deepest depth then producing or capable of producing Minerals in paying quantities.

B. Ninety (90) day rework. If production should thereafter cease as to acreage included in a proration unit or pooled unit, this Lease will terminate as to such acreage unless Lessee commences reworking or additional drilling operations on such acreage within ninety (90) days thereafter and continues such reworking or additional drilling operations until such production is restored thereon, provided that if more than sixty (60) days pass between the abandonment of such well and the commencement of actual drilling operations for an additional well, or more than ninety (90) days pass since the commencement of reworking operations without the restoration of production of Minerals in paying quantities, this Lease shall terminate as to the applicable proration unit and the pooled unit.

C. Release and Survival of Lessee Obligations. At any time or times that this Lease terminates as to all or any portion of the acreage of the Leased Premises, Lessee shall promptly execute and record in the Official Public Records of Tarrant County, Texas, a proper release of such terminated acreage and all depths thereunder and shall furnish executed counterparts of each such release to Lessor at the address shown in Section 18 hereof. All obligations of Lessee contained in this Lease that are to be performed by Lessee regardless of the execution and delivery of releases of this Lease by Lessee shall continue in force and effect and survive the execution and delivery of such releases.

D. Definition. "Completion of drilling" as used herein means, as to dry holes, the date Lessee releases the drilling rig used to drill such well or the date such rig is moved off of the location, whichever date occurs first, and as to producing wells, the date Lessee has run casing and production casing or tubing and has perforated and/or tested the well, except for producing wells which are "fraced" by Lessee, "completion of drilling" shall mean the earlier to occur of (i) 90 days from the date Lessee releases the drilling rig used to drill such well or 90 days from the date such rig is moved off of the location, whichever date occurs first, or (ii) the date Lessee completes such "fracing" operations and conducts a flow test on the well. "Commencement of drilling" as used herein means the date Lessee commences actual drilling with rotary drilling tools of a suitable size necessary to reach the object depth.

## 7. OFFSET OBLIGATIONS

A. Offset Obligation. In the event one or more wells producing oil and/or gas should be brought in on land outside the Leased Premises but within 467 feet from any boundary of the Leased Premises for wells classified as oil wells ("Oil Boundary"), or within 600 feet from any boundary of the Leased Premises for wells classified as gas wells ("Gas Boundary"), or are brought in elsewhere and are draining the Leased Premises, or a portion thereof (said wells located within 467 feet of the Oil Boundary, or 600 feet of the Gas Boundary, or which are draining the Leased Premises or portion thereof being hereinafter referred to singularly as the "Draining Well") and there is then no well with a bottom hole location on the Leased Premises or lands pooled therewith producing oil or gas, as the case may be, in commercial quantities from the same geological formation as the Draining Well, then Lessee agrees within one hundred and twenty (120) days from commencement of production from the Draining Well or Wells to commence the actual drilling of an offset well or wells to the same geological formation as the Draining Well or Wells, with such offset well or wells having a bottomhole location(s) on the Leased Premises or lands pooled therewith; or Lessee shall release to Lessor all of the acreage covered by this Lease as to the proration or pooled unit in accordance with section 6.A. hereinabove..

B. Implied Duty to Protect from Drainage. The foregoing offset obligation shall be in addition to the duty the Lessee has to protect the Leased Premises from drainage which is implied in the absence of any express provisions dealing with drainage, and Lessee shall owe such duty to Lessor in addition to the contractual provisions hereof.

## 8. FORCE MAJEURE

A. Force Majeure. The term "force majeure" as used herein shall mean and include: requisition,

order, regulation, permit or control by governmental authority or commission; undue delay caused by a municipality in granting a permit to drill; exercise of rights or priority or control by governmental authority for national defense or war purpose resulting in delay in obtaining or inability to obtain either material, equipment or means of transportation normally necessary in prospecting or drilling for Minerals, or in producing, handling or transporting same from the Leased Premises or lands pooled therewith; war; acts of God; scarcity or delay in obtaining materials or equipment; lack of labor or means of transportation of labor or materials; insurrection; flood; or strike.

B. Not Grounds for Termination. Notwithstanding any other provisions of this Lease, but subject to the conditions hereinafter set forth in this Section 8, should Lessee be prevented by "force majeure" as defined above, from conducting drilling, completion or reworking operations on, or producing Minerals from, the Leased Premises or lands pooled therewith, such failure shall not constitute a ground for the termination of this Lease or subject said Lessee to damages therefor; and the period of time during which Lessee is so prevented shall not be counted against Lessee, but this Lease shall be extended for a period of time equal to that during which such Lessee is so prevented from conducting such drilling or reworking operations on, or producing Minerals from, such Leased Premises or lands pooled therewith plus a reasonable period of time to begin or resume operations; provided, however, such reasonable period of time shall not exceed one hundred twenty (120) days. All of the provisions of this Section 8 are subject to each of the following express conditions:

C. Limitations. The terms and conditions of this Section 8 shall not extend beyond the expiration date of any law, order, rule or regulation invoked under this Section 8, and shall be applicable and effective only during the following periods:

- (1) If the force majeure shall occur during the Primary Term of this Lease, as the same may be extended pursuant to Section 6 hereof, force majeure shall not operate to extend this Lease more than one (1) year beyond the expiration of such Primary Term; provided, however, that if the event of force majeure is any form of injunction granted pursuant to a mineral partition lawsuit or similar action brought against Lessee, then such force majeure shall not operate to extend this Lease more than the lesser of six (6) months or the period of time during which such injunction is effective.
- (2) If the force majeure shall occur during a sixty (60) day drilling or reworking period provided for in Section 5 hereof, after the Primary Term has expired, then force majeure shall not operate to extend this Lease more than one (1) year beyond the expiration of such sixty (60) day period.

D. Notice. None of the provisions of this Section 8 shall ever be or become effective and applicable unless Lessee shall, within a reasonable time (not to exceed sixty (60) days in any event) after occurrence of the claimed event of force majeure above referred to, notify Lessor, in writing, of such occurrence with full particulars thereof.

E. Not Applicable to Monetary Payments. The terms of this Section 8 do not apply to monetary payments due under the terms of this Lease.

F. Time of the Essence. Time is of the essence with respect to each provision of this Lease.

## 9. SHUT-IN GAS WELL PROVISIONS

After the primary term, if at any time there is a well on the Leased Premises or land pooled therewith which is capable of producing gas in paying quantities, but the production thereof is shut-in or suspended, and if this

Lease is not then continued in force by some other provision hereof, then this Lease shall nevertheless continue in force as to such well and the pooled unit or proration unit allocated to it for a period of sixty (60) days from the date such well is shut-in. Before the expiration of any such sixty (60) day period, Lessee may pay to Lessor an advance annual royalty equal to Five Thousand and No/100 Dollars (\$5,000.00) per shut-in well and if such payment or tender is timely made, this Lease shall continue in force but only as to said well or wells and the proration unit allocated to it or them and it shall be considered that gas is being produced from said well or wells in paying quantities for one (1) year from the date such well or wells are shut-in, and in like manner one, and only one, subsequent advance annual royalty payment may be made or tendered and it will be considered that gas is being produced from said well or wells in paying quantities for such additional one (1) year period as well, but in no event shall Lessee be entitled to pay shut-ins for more than 2 years cumulative, per well, during the term of this lease. Notwithstanding anything to the contrary contained in this lease, at the option of Lessee, which may be exercised by Lessee giving notice to Lessor, a well which has been drilled and Lessee intends to frac shall be deemed a well capable of producing in paying quantities and the date such well is shut-in shall be when the drilling operations are completed.

Should such shut-in royalty payments not be made in a timely manner as provided in this Section 9, it will be considered for all purposes that there is no production and no excuse for delayed production of gas from any such well or wells, and unless there is then in effect other preservation provisions of this Lease, Lessor may, at Lessor's option, elect to terminate this Lease by sending written notice to Lessee and by filing a Notice of Termination in the Official Public Records of Tarrant County, Texas. The effective date of said termination shall be the date said Notice of Termination is filed with the said County Clerk.

## 10. ROYALTIES

Lessee shall pay to Lessor the following royalties, which, except as otherwise herein provided, shall be free of all costs of any kind, including, but not limited to, costs of gathering, production, transportation, treating, compression, dehydration, separating, processing, marketing, trucking or other pre and post production expense, directly or indirectly incurred by Lessee, whether as a direct charge or a reduced price or otherwise. In this regard, Lessee agrees to bear one hundred percent (100%) of all costs and expenses incurred in rendering Minerals produced on or from the Leased Premises or lands pooled therewith marketable and delivering the same into the purchaser's pipeline for immediate transportation to an end user or storage facility.

It is the intent of the parties that the provisions of this Section 10 are to be fully effective and enforceable and are not to be construed as "surplusage" under the holding set forth in *Heritage Resources v. NationsBank*, 939 S.W.2d 118 (Tex. 1996). Additionally, said royalties shall never bear, either directly or indirectly, under any circumstances, the costs or expenses (including depreciation) to construct, repair, renovate or operate any pipeline, plant, or other facilities or equipment used in connection with the treating, separation, extraction, gathering, processing, refining, transporting, manufacturing or marketing of Minerals produced from the Leased Premises or lands pooled therewith. Lessor shall be paid royalty on all oil or gas produced, including without limitation oil or gas used by Lessee for operations on or off the Leased Premises or lands pooled therewith. Notwithstanding anything to the contrary, Lessor's royalties shall bear Lessor's proportionate part of all (i) ad valorem, excise, state severance, wind-fall profits, or like and similar taxes imposed on Minerals or on the value thereof that is attributable to Lessor's royalties, if any, paid by Lessee, and (ii) costs and expenses that are charged by a third party that is not a subsidiary or an affiliate of Lessee, to Lessee, for compression, transportation, processing or treatment of gas produced from the Leased Premises, which proportionate part may be deducted by Lessee from Lessor's royalties before payment to Lessor by Lessee.

A. Royalty. On oil, gas (including flared gas and oil and gas produced from the Leased Premises and used by Lessee as fuel for lease operation, compression, separation, dehydration, transportation or other Lessee operations) and casinghead gas, together with any other liquid or gaseous hydrocarbons recovered by lease operations such as drips or separators, and on any other type of Minerals, twenty-five and one-half percent (25.5%) of the proceeds of the sale or of the gross market value thereof, whichever is higher, (provided that with respect to oil, gas, casinghead gas, or any other liquid or gaseous hydrocarbons recovered by lease operations and used by Lessee for operations on or off the Leased Premises or lands pooled therewith, royalty

shall be twenty-five and one-half percent (25.5%) of the gross market value thereof), plus, reimbursement of the costs described in the first paragraph of this Section 10, if applicable. Such oil, gas and casinghead gas, together with any other liquid or gaseous hydrocarbons recovered by lease operations, is to be delivered free of cost to the credit of Lessor into pipelines, gathering lines, or other facilities to which the wells and tanks on the property may be connected; or to be delivered in kind into tanks, gathering lines, or other shipping facilities provided by Lessor, at Lessor's option but at Lessee's expense, such option to be exercised by Lessor from time to time, but for periods of not less than six (6) months at a time after ninety (90) days written notice to Lessee of Lessor's intention to take in kind such oil, gas or other hydrocarbons.

B. Products. On products resulting from such oil, gas, casinghead gas, or other Minerals, twenty-five and one-half percent (25.5%) of the gross market value or proceeds of sale thereof, whichever is higher, plus reimbursement of the costs described in the first paragraph of this Section 10, if applicable.

C. Residue Gas. On residue gas or gas remaining after separation, extraction or processing operations, twenty-five and one-half percent (25.5%) of the proceeds of sale or of the gross market value thereof, whichever is higher, plus reimbursement of the costs described in the first paragraph of this Section 10, if applicable.

D. Meaning of Market Value. For purposes of this Section 10, the term "gross market value" shall mean for such oil, gas, casinghead gas, other Minerals, and products therefrom the gross price at which such oil, gas, casinghead gas, other Minerals or products therefrom are sold pursuant to a Production Sales Contract (defined below). Included within the definition of "gross market value" as used herein is the presumption that "Production Sales Contracts" shall mean that they have been negotiated by Lessee in good faith at arms-length contracts with bona fide purchasers who are not subsidiaries or affiliates of Lessee, and contain adequate provisions for redetermination of price at intervals of no less frequency than twelve (12) months to ensure that such production is being sold for no less than the current market price. If oil, gas, casinghead gas, other Minerals and products therefrom are not sold pursuant to a Production Sales Contract, "gross market value" shall, for oil and field liquids, be the prevailing price for oil of a like type and gravity for the field where produced and when run, and for gas and casinghead gas, be determined through the use of market value index prices for the month of production as set forth by *Inside F.E.R.C.'s Gas Market Report*, or its successors, for the Houston Ship Channel, with appropriate deduction, as reasonably determined in good faith and fair dealing by Lessee, for the cost of transmission of the gas through common carrier transmission lines from the field in which the Leased Premises are located to the Houston Ship Channel. If for any reason such publication, or its successors, ceases to publish such pipeline index price, then the index price shall be the price published during each month by *Natural Gas Week*, its successors, for the Houston Ship Channel, with appropriate deduction, as reasonably determined in good faith and fair dealing by Lessee, for the cost of transmission of the gas through common carrier transmission lines from such field to the Houston Ship Channel. If both *Inside F.E.R.C.'s Gas Market Report* and *Natural Gas Week*, and their successors, cease to publish such pipeline index price, then the parties shall use the published price given by a publication most nearly comparable to the price indicated above then published by *Inside F.E.R.C.'s Gas Market Report*, for the Houston Ship Channel, with appropriate deduction, as reasonably determined in good faith and fair dealing by Lessee, for the cost of transmission of the gas through common carrier transmission lines from such field to the Houston Ship Channel. In no event, however, shall "gross market value" ever be less than the amount actually received by the Lessee and/or any subsidiary or affiliate of Lessee for the sale of Minerals, plus the value of all other consideration and benefits of whatsoever kind and amount received, directly or indirectly, by Lessee and/or any affiliate or subsidiary of Lessee, for the sale of Minerals.

E. Payment of Royalty. In the absence of a good faith title dispute, all royalties provided in this Lease shall be payable in cash (unless Lessor elects to take such royalty Minerals in kind) to Lessor within one hundred twenty (120) days following the end of the month of the first commercial sale of production and thereafter no more than sixty (60) days after the end of the month during which production takes place. Subject to the provisions of Section 9 of this Lease concerning shut-in wells, royalties shall be paid to Lessor

by Lessee and/or its assigns or by the product purchaser for Minerals. Upon the failure of any party to pay Lessor the royalty as provided in this Paragraph 10.E, Lessor may, at Lessor's option, elect to terminate this Lease by sending written notice to Lessee. Lessee shall then have thirty (30) days from the date of service of such written notice in which to avoid termination of this Lease by making or causing to be made the proper royalty payment or payments that should have been paid; provided, however, such right to avoid termination by making or causing to be made proper royalty payment or payments shall be available to Lessee no more than twice in any consecutive twelve (12) month period. If such royalty payment is not made on or before the expiration of the thirty (30) day period, or written approval is not obtained from Lessor to defer such payment, Lessor may elect to terminate this Lease by filing a Notice of Termination in the Official Public Records of Tarrant County, Texas. The effective date of said termination shall be the date said Notice of Termination is filed with the said County Clerk.

F. [Intentionally Deleted]

G. Take or Pay. In the event Lessee enters into a Mineral purchase contract which contains what is commonly referred to as a "take or pay provision" (such provision meaning that the Mineral purchaser agrees to take delivery of a specified minimum volume or quantity of Minerals over a specified term at a specified price or to make minimum periodic payments to the producer for Minerals not taken by the purchaser) and the purchaser under such Mineral purchase contract makes payment to Lessee by virtue of such purchaser's failure to take delivery of such minimum volume or quantity of Minerals, then Lessor shall be entitled to twenty-five and one-half percent (25.5%) of all such sums paid to Lessee or producer under the "pay" provisions of such Mineral purchase contract. Such royalty payments shall be due and owing to Lessor within sixty (60) days after the receipt of such payments by Lessee. Any royalty payments made to Lessor under the "pay" obligation of any "take or pay" Mineral contract shall be applied as a credit toward Lessee's minimum royalty obligation. If the Mineral purchaser "makes up" such Minerals within the period called for in the Mineral contract and Lessee is required to give such purchaser a credit for Minerals previously paid for but not taken, then Lessor shall not be entitled to royalty on such "make up" Minerals. If Lessee is not producing any quantities of Minerals from the Leased Premises or lands pooled therewith but is receiving payments under the "pay" portion of such "take or pay" Mineral purchase contract provision, such payments shall not relieve Lessee of the duty to make shut-in royalty payments if Lessee desires to continue this Lease, but such "take or pay" royalty payments shall be applied as a credit against any shut-in royalty obligation of the Lessee. Lessor shall be a third-party beneficiary of any Mineral purchase contract and/or transportation agreement entered into between Lessee and any purchaser and/or transporter of Lessor's Minerals, irrespective of any provision of said contracts to the contrary, and such Mineral purchase contract and/or transportation agreement will expressly so provide. Further, Lessor shall be entitled to twenty-five and one-half percent (25.5%) of the value of any benefits obtained by or granted to Lessee from any Mineral purchaser and/or transporter for the amendment, modification, extension, alteration, consolidation, transfer, cancellation or settlement of any Mineral purchase contract and/or transportation agreement.

H. Use of Separator. Lessee agrees that before any gas produced from the Leased Premises is used or sold off the Leased Premises, it will be run, free of cost to Lessor, through an adequate oil and gas separator of a conventional type or equipment that will ensure that all liquid hydrocarbons recoverable from the gas by such means will be recovered on this Lease and Lessor properly compensated therefor.

I. Erroneous Payments. Any payment of royalty or shut-in royalty hereunder paid to Lessor in excess of the amount actually due to Lessor shall nevertheless become the property of Lessor if Lessee does not make written request to Lessor for reimbursement within twelve (12) months from the date that Lessor received the erroneous payment, it being agreed and expressly understood between the parties hereto that Lessor is not the collecting agent for any other royalty owner under the lands covered hereby, and a determination of the name, interest ownership and whereabouts of any person entitled to any payment whatsoever under the terms hereof shall be the sole responsibility of Lessee. It is further expressly agreed and understood that: (i) this provision shall in no way diminish the obligation of Lessee to make full and punctual payments of all amounts



due to Lessor or to any other person under the terms and provisions of this Lease, and (ii) any overpayments made to Lessor under any provisions of this Lease shall not be entitled to be offset against future amounts payable to parties hereunder.

J. Division Orders. Regardless of the contents of any division order executed by Lessor the terms of this Lease may not be amended by any division order and the signing of a division order by any mineral owner may not be made a prerequisite to payment of royalty hereunder.

K. [Intentionally Deleted]

L. Security Interest. Lessor hereby retains a security interest in an amount equal to the percentages of royalty reserved in this Lease of all (1) Minerals produced from the Leased Premises or lands pooled therewith, under and pursuant to this Lease, and (2) proceeds of sale of such Minerals and all accounts arising therefrom, (collectively, the "Collateral") to secure Lessee's payment of royalties and compliance with the other terms and provisions of this Lease. In addition to any other remedies provided in this Lease, Lessor, as a secured party, may in the event of Lessee's default hereunder, proceed under the Texas Uniform Commercial Code as to the Collateral, in any manner permitted by said Code. In the event of default by Lessee, then in addition to all other rights and remedies available to Lessor, Lessor shall have the right to take possession of the Collateral, to receive the proceeds attributable thereto, to hold same as security for Lessee's obligations or to apply it on the amounts owing to Lessor hereunder.

## 11. INFORMATION ACCESS AND REPORTS

A. Access to Information. Lessee agrees to make available, at Lessee's offices, to Lessor or Lessor's nominee, well information, logs (including Schlumberger and other electrical logs), results of deviation tests and directional surveys, and the results of all drill stem tests made with respect to the Leased Premises or lands pooled therewith or wells on the Leased Premises or lands pooled therewith. Lessor or Lessor's nominee shall have free access during normal business hours to Lessee's books and records relative to the production and sale of Minerals from the Leased Premises or lands pooled therewith, including reports of every kind and character to governmental authorities, State or Federal. Lessor shall have the right at its own election and risk, and its sole cost and expense, to employ gaugers or install meters to gauge or measure the production of all Minerals produced from the Leased Premises or lands pooled therewith, and Lessee agrees to make available, at Lessee's offices, to Lessor or Lessor's gauger or nominee run or gauge tickets for all Minerals removed from the Leased Premises or lands pooled therewith. Lessee shall furnish to Lessor daily drilling reports on each well drilled. Lessor agrees to keep confidential the information obtained by Lessor pursuant to this Paragraph 11.A, in accordance with the following provisions:

1. Without the prior written consent of Lessee, the information will not be disclosed by Lessor or its officers, directors, partners, employees, affiliates, agents or representatives (collectively "Representatives"), unless the information is covered by a Confidentiality Exception, and will not be used by Lessor or its Representatives other than in connection with the matters covered by or concerning this Lease or the Leased Premises.
2. Notwithstanding anything herein to the contrary, no obligation or liability shall accrue hereunder with respect to any information that is a Confidentiality Exception. As used herein, the term "Confidentiality Exception" shall mean information described in Paragraphs 11.A and 11.A.3 that (a) is or becomes publicly available other than as a result of acts by Lessor or by its Representatives in violation of this Lease, (b) is lawfully in the possession of Lessor or its Representatives prior to disclosure by Lessee, (c) is or becomes available to Lessor from a source that, to Lessor's knowledge, is not bound by a confidentiality agreement with Lessee prohibiting such disclosure, (d) required to be disclosed by law or by legal process, including a subpoena or court order, or (e) Lessor discloses to its legal counsel, accountants, bankers

and lenders. At the time Lessor discloses any information it obtains pursuant to Paragraph 11.A to parties described in part (e) immediately preceding, it will request the party to whom it discloses such information to abide by the provisions of this Section 11.

3. As to information which relates to particular lands and subsurface depths covered by this Lease, Lessor agrees to keep such information confidential (subject, however, to the Confidentiality Exceptions) for as long as this Lease remains in force and effect as to such particular lands and subsurface depths, it being understood that (i) as particular lands and subsurface depths are released from this Lease, Lessor's obligation to keep information which relates to such lands and subsurface depths confidential shall cease and (ii) Lessor shall not have any obligation whatsoever to keep information confidential once this Lease is no longer in force and effect.

## 12. SURVEYS, ABSTRACTS, TITLE OPINIONS AND CURATIVE WORK

A. Surveys and Maps. If Lessee shall cause any of the exterior or interior lines of the property covered by this Lease to be surveyed, Lessee shall furnish Lessor a copy of such survey.

B. Abstracts of Title. In the event Lessee causes an abstract of title to be prepared covering the Leased Premises or lands pooled therewith, or any portion thereof, Lessor shall have access to said abstract at any reasonable time. In the event Lessee shall cause the title to be examined or should obtain a title opinion or title certificate upon the property herein leased, Lessee agrees to furnish Lessor a copy or photostatic copy thereof within a reasonable time of receipt of the same by Lessee, with the understanding that neither Lessee nor the attorney or firm of attorneys rendering the opinion or certificate shall be responsible to Lessor for its correctness, the said opinion or certificate being furnished to Lessor simply for Lessor's own convenience, information and personal use. Similarly, if any curative material is obtained by Lessee, a copy thereof shall immediately be furnished Lessor under the same conditions of non-liability on the part of the Lessee or the persons who may have obtained or prepared the same.

## 13. USE OF THE SURFACE AND SUBSURFACE

A. No Surface Use; Subsurface Operations. Lessee acknowledges that the protection of the surface of the Leased Premises and Lessor's use of the Leased Premises as a commercial property site, are of the utmost concern and importance to Lessor. To that end and **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LESSEE EXPRESSLY AGREES THAT (i) LESSEE SHALL HAVE NO RIGHTS WHATSOEVER WITH RESPECT TO, AND LESSEE SHALL NOT GO ONTO, THE SURFACE OF THE LEASED PREMISES, (ii) LESSEE DOES NOT HAVE OR HEREBY ACQUIRE ANY ACCESS RIGHTS WHATSOEVER TO THE SURFACE OF THE LEASED PREMISES, (iii) LESSEE WILL NOT AND SHALL NOT CONDUCT ANY OPERATIONS, INCLUDING BUT NOT LIMITED TO GEOPHYSICAL SURVEYS AND SEISMIC OPERATIONS, ON OR CONSTRUCT ANY STRUCTURE OF ANY TYPE OR NATURE ON THE SURFACE OF THE LEASED PREMISES. FURTHERMORE, LESSEE SHALL HAVE NO RIGHT TO INSTALL PIPELINES, COLLECTION LINES OR GATHERING LINES ON, UNDER OR WITHIN THE LEASED PREMISES. SUBJECT TO THE OTHER PROVISIONS OF THIS LEASE, LESSEE SHALL HAVE THE RIGHT UNDER THIS LEASE: (i) TO EXPLORE THE SUBSURFACE OF THE LEASED PREMISES, AND (ii) TO DRILL, OR OTHERWISE OPERATE, UNDER, AND PRODUCE MINERALS FROM SUBSURFACE DEPTHS OF THE LEASED PREMISES FROM WELLS THE SURFACE LOCATIONS OF WHICH ARE NOT ON THE LEASED PREMISES, SO LONG AS SUCH SUBSURFACE OPERATIONS ARE CONDUCTED AT A SUBSURFACE DEPTH WHICH IS DEEPER THAN 4,000 FEET SUBSURFACE AND OTHERWISE COMPLY WITH ALL OF THE OTHER TERMS OF THIS LEASE.**

B. Hazardous Materials and Substances. In connection with Lessee's operations related to this Lease, Lessee shall use a high degree of care and all reasonable safeguards to prevent contamination or pollution of any environmental medium, including soil, surface waters, groundwater, sediments, and surface or subsurface strata, ambient air or any other environmental medium, especially in, on, or under, the Leased Premises, by any waste, pollutant, or contaminant. Lessee shall not bring or permit to remain on the Leased Premises any explosives, or Hazardous Substances.

If any Hazardous Substances are used, stored, generated, or released or disposed of on or in the Leased Premises by Lessee or Lessee's agents, employees or contractors, or if, in connection with Lessee's operations related to this Lease, any environmental medium, including, without limitation, the Leased Premises become contaminated by any waste, pollutant or contaminant in any manner by Lessee or Lessee's agents, employees or contractors, Lessee agrees to indemnify, defend and hold harmless Lessor from and against any and all claims, damages, fines, judgments, attorneys' fees, penalties, costs, liabilities or losses arising during or after the Term of this Lease and arising as a result of such use, storage, generation, release, disposal, discharge or contamination. This indemnification includes any and all reasonable and necessary costs of investigation, cleanup, remediation, removal or restoration mandated by applicable Laws or order or directive of any governmental agency or political subdivision. Lessee will notify Lessor promptly upon learning that any duty described in this Paragraph 13.A has been violated; that there has been a release, discharge or disposal of any Hazardous Substance or any waste, pollutant or contaminant by Lessee or Lessee's agents, employees or contractors in connection with Lessee's operations related to this Lease; or that the Leased Premises are subject to any third party claim or action, or threat thereof, because of an environmental condition arising in connection with the operation of Lessee's business. Lessee shall clean up, remove, remedy and repair any soil or ground water contamination and damage caused by the presence or release of any Hazardous Substances and/or any other waste, pollutant or contaminant resulting from Lessee's operation related to this Lease, including, without limitation any soil or ground water contamination or damage in, on, under, or about the Leased Premises resulting from Lessee's operations on the Leased Premises; provided, however, upon written notice from Lessor to Lessee, Lessor will have the right to perform such cleanup removal remedy or repair and all costs of such actions including environmental consultant fees, will be the obligation of Lessee. Lessee further agrees to indemnify and hold Lessor harmless from and against any and all claims, damages, fines, judgments, attorneys' fees, penalties, and costs liabilities, and losses arising from the offsite treatment, disposal, discharge, spill, or release of any Hazardous Substance or waste, pollutant or contaminant removed from the Leased Premises by Lessee or Lessee's agents, employees, or contractors. As used herein "Hazardous Substances" means asbestos, brine, naturally occurring radioactive materials ("NORM"), any petroleum material, polychlorinated biphenyls (PCB's) and any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Texas or the United States government, including, but not limited to, any material or substance defined as a "hazardous waste", "extremely hazardous waste", "restricted hazardous waste", "hazardous substances", "hazardous material" or "toxic pollutant" under Texas statutes and/or under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq, or any other applicable Laws. The obligations of Lessee hereunder shall survive the expiration or earlier termination, for any reason, of this Lease.

C. Reservation of Rights. Lessor expressly reserves all rights with respect to the surface of the Leased Premises. Additionally, Lessor expressly reserves all rights with respect to the subsurface of the Leased Premises (the ownership of which shall remain vested in Lessor) for any and all purposes except those specifically granted to Lessee under this Lease. Without limiting the foregoing, Lessor expressly reserves the right to explore by any method, drill for, mine, produce, treat and store and transport any and all minerals other than those covered by this Lease, as well as the right to use the Leased Premises for the purposes of, without limitation, commercial, industrial, and/ or mixed use development, and for the purpose of ingress and egress to and from other tracts of land owned by Lessor in the vicinity.

D. Secondary Recovery Operations. Lessee shall have the right to inject gas, brine or other fluids into subsurface strata only in connection with hydraulic fracturing or secondary recovery operations on wells

with drillsite locations located outside the Leased Premises. Under no circumstances shall Lessee use any water on or adjacent to the Leased Premises for injection purposes without Lessor's prior written consent.

E. Lessee's Liability. Lessee shall be liable for all damage caused by Lessee or the employees or independent contractors of Lessee to any and all of the property of Lessor, including, but not limited to roads, fences, livestock, growing crops, buildings and ground surfaces, and should such damage occur, Lessee agrees to either repair the same or to pay Lessor the cost and amount of such damage within three months after the occurrence of such damage.

F. Water Use. Water from or on the Leased Premises shall not be used for Lessee's operations without consent of Lessor. Under no circumstances shall Lessee use any water from or on the Leased Premises for injection purposes without Lessor's prior written consent.

G. Nearby Surface Operations. Notwithstanding anything to the contrary contained in this Lease, Lessee expressly agrees that any surface operations conducted by Lessee, or its subsidiaries or affiliates, on lands which are adjacent and/or nearby to the Leased Premises, will not and shall not be located within two thousand feet (2,000') of the Leased Premises.

#### 14. ASSIGNABILITY BY LESSEE

A. Lessee's Right to Transfer. Subject to Paragraph 14.B, Lessee may assign or transfer all or a portion of its interest in this Lease to XTO Energy Inc. or any affiliate of XTO Energy Inc., provided, however, such right shall be conditioned on Lessee delivering to Lessor notice of such assignment or transfer, which notice shall include a copy of such assignment and transfer documents. Otherwise, Lessee, XTO Energy Inc., or any affiliate of XTO Energy Inc. may not transfer, assign, deliver, set over, or convey, whether by individual purchase, package/bundle sale or merger, this Lease without the prior express written consent of Lessor.

B. Assumption Obligations. All transfers (including assignments, sales, subleases, overriding royalty conveyances, or production payment arrangements) must (i) contain a provision reflecting that the transferee or assignee has specifically assumed all of the Lessee's obligations under this Lease, (ii) be recorded in Official Public Records of Tarrant County, Texas, and (iii) the recorded transfer or a copy certified by the County Clerk of Tarrant County, Texas must be delivered to Lessor within ninety (90) days of the execution date. Every transferee shall succeed to all rights and be subject to all obligations, liabilities, and penalties owed to Lessor by the original Lessee or any prior transferee of this Lease, including any liabilities to Lessor for unpaid royalties; provided, however, the grantor, assignor or transferor in such transfer or assignment shall also continue to be liable for all such obligations, liabilities, and penalties owed to Lessor by the original Lessee or any prior transferee of this Lease. Notwithstanding any other actual or constructive knowledge or notice thereof or to Lessee, no change or division in the ownership of said land or the royalties, or other moneys, or the right to receive the same, howsoever effected, shall be binding upon Lessee until thirty (30) days after there has been furnished to Lessee by Lessor or Lessor's heirs, successors, or assigns, notice of such change or division, supported by either originals or duly certified copies of the instruments which have been properly filed of record and which evidence such change or division, and of such court records and proceedings, or other documents as shall be necessary in the reasonable opinion of Lessee to establish the validity of such change or division.

#### 15. ASSIGNABILITY BY LESSOR

The rights of Lessor hereunder may be assigned or delegated in whole or in part to any party, and the provisions hereof shall extend to Lessor's heirs, successors, assigns and delegates, but no change or division in the ownership of the land or royalties, however accomplished, shall operate to enlarge the obligations or diminish the rights of Lessee. Upon any assignment or delegation of all of Lessor's rights and/or obligations under this Lease, the assignee/delegatee will be deemed to be substituted for Lessor under this Lease and the

assignee/delegatee will be entitled to exercise all of the rights and shall be subject to all of the obligations of Lessor under this Lease. Upon any such assignment or delegation of all of Lessor's rights and/or obligations, all references to Lessor in this Lease will thereafter be deemed to be references to the assignee or delegatee as applicable. Upon any partial assignment or delegation of Lessor's rights and/or obligations under this Lease, the assignee/delegatee will be entitled to exercise its prorata portion of the rights of Lessor under this Lease and shall be subject to a prorata portion the obligations of Lessor under this Lease. Upon any such assignment or delegation of a portion of Lessor's rights and/or obligations, all references to Lessor in this Lease will thereafter be deemed to be references to the Lessor, assignee and/or delegatee in accordance with their respective rights and obligations under this Lease.

#### 16. NO WARRANTY

A. No Warranties. This Lease is given and granted without warranty, express or implied, in law or in equity.

B. Proportionate Reduction. If Lessor owns a mineral interest in the Leased Premises less than the entire mineral estate, the royalties to be paid Lessor shall be reduced proportionately; provided, however, that in no event shall the shut-in royalty payment amount for a gas well (\$5,000.00), as provided for in Section 9 of this Lease, be reduced when and if paid to Lessor.

#### 17. INDEMNITY

A. Indemnity. **LESSEE SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE INDEMNIFIED PARTIES (AS HEREINAFTER DEFINED) FROM ANY AND ALL LIABILITIES, LIENS, DEMANDS, JUDGMENTS, COSTS, EXPENSES, SUITS AND CLAIMS OF ANY KIND OR CHARACTER ARISING OUT OF, IN CONNECTION WITH, OR RELATING TO, ANY OPERATION OR ACTIVITY CONDUCTED BY LESSEE, OR ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, LICENSEES OR INVITEES, ON OR UNDER THE LEASED PREMISES, OR ANY BREACH OF THIS LEASE BY LESSEE, INCLUDING BUT NOT LIMITED TO CLAIMS FOR INJURY OR DEATH OF ANY PERSONS OR DAMAGE, LOSS OR DESTRUCTION OF ANY PROPERTY, REAL OR PERSONAL, UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHERWISE, AND EXPRESSLY INCLUDING LESSOR'S OWN NEGLIGENCE. LESSEE FURTHER COVENANTS AND AGREES TO DEFEND ANY SUITS BROUGHT AGAINST ANY OF THE INDEMNIFIED PARTIES ON ACCOUNT OF SAID CLAIMS AND TO PAY ANY JUDGMENTS AGAINST ANY OR ALL OF THE INDEMNIFIED PARTIES RESULTING FROM ANY SUCH SUIT OR SUITS, TOGETHER WITH ALL COSTS AND EXPENSES RELATIVE TO ANY SUCH CLAIMS, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES. EACH OF THE INDEMNIFIED PARTIES SHALL HAVE THE RIGHT TO PARTICIPATE IN THE DEFENSE OF ANY SUIT OR CLAIM IN WHICH THEY (OR ANY OF THEM) MAY BE A PARTY WITHOUT RELIEVING LESSEE OF ITS OBLIGATIONS HEREUNDER.**

B. Nature of Indemnity. **THE FOREGOING INDEMNITY SHALL APPLY WHETHER OR NOT ARISING OUT OF THE SOLE, JOINT, OR CONCURRENT NEGLIGENCE, FAULT OR STRICT LIABILITY OF LESSOR OR ANY OF THE INDEMNIFIED PARTIES AND SHALL APPLY, WITHOUT LIMITATION, TO ANY LIABILITY IMPOSED UPON ANY OF THE INDEMNIFIED PARTIES AS A RESULT OF ANY THEORY OF STRICT LIABILITY OR ANY OTHER DOCTRINE OF LAW OR EQUITY, PROVIDED THAT THE FOREGOING INDEMNITY SHALL NOT APPLY TO ANY COSTS, EXPENSES, LOSSES OR LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSOR. THE FOREGOING INDEMNITY AND ALL OTHER INDEMNITIES OF LESSEE CONTAINED IN THIS LEASE SHALL SURVIVE ANY TERMINATION OF THIS LEASE AND**

**SHALL INURE TO THE BENEFIT OF LESSOR AND EACH OF THE INDEMNIFIED PARTIES. AS USED IN THIS LEASE, THE TERM "INDEMNIFIED PARTIES" REFERS TO (i) LESSOR, ITS AFFILIATES, AND ALL OF THE OFFICERS, DIRECTORS, PARTNERS, MEMBERS, EMPLOYEES AND AGENTS OF LESSOR AND ITS AFFILIATES, (ii) LESSOR'S MORTGAGEES, AND (iii) THE SUCCESSORS AND ASSIGNS OF THE PERSONS AND ENTITIES DESCRIBED IN (i). LESSEE HEREBY AGREES AND DECLARES THAT THE PROVISIONS CONTAINED IN PARAGRAPHS A AND B OF THIS SECTION 17 ARE CONSPICUOUS AND COMPLY WITH THE EXPRESS NEGLIGENCE RULE.**

#### 18. NOTICES

A. Lessor's Address. All notices, information, letters, surveys, reports, material, and all other documents required or permitted to be sent to Lessor by Lessee will be deemed to have been given and received when delivered personally, or on the business day following the day sent by courier, or on the third (3rd) Business Day after the same is sent by certified United States mail, postage prepaid, return receipt requested, to the following persons at the following addresses:

Costco Wholesale Corporation  
999 Lake Drive  
Issaquah, Washington 86027  
Attn: Legal/Property Management

With a copy to:

Louis J. Davis  
Thompson & Knight LLP  
333 Clay Street, Suite 3300  
Houston, Texas 77002

B. Lessee's Address. All notices required or permitted to be sent to Lessee by Lessor will be deemed to have been given and received when delivered personally, or on the business day following the day sent by courier, or on the third (3rd) Business Day after the same is sent to Lessee by certified United States mail, postage prepaid, return receipt requested, to the following address:

**Vargas Energy, Ltd.**  
**4200 S. Hulen, Suite 614**  
**Fort Worth, TX 76109**  
**Attn: Crawford Edwards**

C. Business Day. As used herein, the term "Business Day" means a day other than a Saturday, Sunday or day on which commercial banks in the State of Texas are authorized or required to be closed for business.

D. Change of Address. Any party hereto shall have the right to change the name or address of the person or persons required to receive notices and other documents by so notifying the other party in writing.

#### 19. BREACH BY LESSEE

A. General Compliance Obligation. Lessee shall conduct Lessee's operations in strict compliance with all of the terms and provisions of this Lease and with all applicable Laws and the regulations of any regulatory body having jurisdiction of such operations including, but not limited to, all local, state and federal environmental rules and regulations. Lessee shall bear all costs and other burdens of complying with all

applicable Laws and the rules and regulations promulgated thereunder governing Lessee's operations, including without limitation all costs and burdens associated with obtaining drilling permits and other approvals for those operations from all applicable governmental authorities and complying with the restrictions of all applicable governmental authority drilling ordinances and regulations.

B. Lessee's Cure Rights. In the event Lessor considers that operations are not, at any time, being conducted in compliance with this Lease, or any implied covenant of this Lease, Lessor may notify Lessee in writing of the facts relied upon as constituting a breach of any express or implied covenant or obligation of, or any provision pertaining to, Lessee hereunder (other than the obligation to pay royalties, which is governed by Paragraph 10.E.), and, Lessee, if in breach, shall have thirty (30) days after receipt of such notice in which to commence compliance with its obligations hereunder. Failure on the part of Lessee to timely commence efforts to rectify any such breach and to exercise diligence in remedying any such breach shall operate as a forfeiture of this Lease as to the portion thereof effected by such breach; provided that if Lessee, in good faith, disputes any alleged grounds of breach set forth in such notice, Lessee may, within said thirty (30) day period, institute a Declaratory Judgment Action in any District Court in Tarrant County, Texas questioning whether it has in fact breached any expressed or implied covenant of this Lease, thereby staying any forfeiture during the pendency of such action. However, in the event that Lessor obtains a final judicial determination in any such proceeding that Lessee is in breach of any covenant hereof, express or implied, then it is agreed: (1) that Lessor shall be entitled to a decree providing for cancellation or forfeiture of this Lease in the event such breach is not rectified or commenced in good faith to be rectified by Lessee within thirty (30) days from date such decree becomes final; and (2) that Lessee shall reimburse Lessor for any and all reasonable attorneys' fees, court costs and witness fees incurred by Lessor in defending any such proceeding.

C. Express Covenants. All express covenants of Lessee contained in this Lease are in addition to, and not in the place of, the covenants of a lessee under an oil and gas lease that are implied under applicable law. In the event of a conflict between such express covenants and implied covenants, the covenant that places a more onerous burden on Lessee and is more favorable to Lessor, shall, at Lessor's option, control.

## 20. FAVORED NATIONS

If at any time or times prior or subsequent to the date of execution of this Lease, Lessee shall obtain a lease from or make a contract with an owner of Minerals in the Leased Premises other than Lessor, then Lessor shall be entitled to any benefits paid for, granted or reserved in such lease or contract which are more favorable to said owner than those paid for, granted or reserved to Lessor in this Lease. Lessee shall pay Lessor immediately Lessor's pro rata share of such benefit, including without limitation, bonus, royalty, rental or shut-in payment or any other benefit more favorable to such mineral owner than the payment for the benefits of this Lease. If necessary in the opinion of Lessor, then Lessee shall amend this Lease to confer such benefits upon Lessor.

## 21. TERMS HERITABLE

All of the terms and provisions of this Lease shall extend to and be binding upon the heirs, executors, administrators, successors and authorized assigns of the parties hereto.

## 22. CAPTIONS

The captions to the various Sections of this Lease are for convenience only, to be used primarily to more readily locate specific provisions. They shall not be considered a part of the Lease, nor shall they be used to interpret any of the provisions of this Lease.

### 23. COUNTERPARTS

This Lease may be executed in multiple counterparts, each of which shall be deemed an original, with the same effect as if the signature thereto and hereto were upon the same instrument.

### 24. FACSIMILE EXECUTION

The parties agree that this Agreement may be transmitted between them by facsimile machine. The parties intend that faxed signatures constitute original signatures and that a faxed agreement containing the signatures (original or faxed) of all the parties is binding on the parties.

### 26. LESSOR'S CONSENT

With respect to any provision of this Lease which provides for or requires Lessor's consent, approval or acceptance, Lessor may give or withhold such consent, approval or acceptance in Lessor's sole and absolute discretion, except with respect to those provisions which expressly provide that Lessor's consent or approval must be reasonable or may not be unreasonably withheld and/or unreasonably delayed.

### 27. SEVERABILITY

If any provision of this Lease or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

### 28. APPLICABLE LAW

This Lease shall be governed by and construed in accordance with the laws of the State of Texas.

### 29. EXAMINATION OF LEASE

Submission of this instrument for examination or signature by Lessee does not constitute a reservation of or option for lease, and it is not effective as a lease or otherwise until execution by and delivery to both Lessor and Lessee.

### 30. INTEREST ON LESSEE'S OBLIGATIONS

Except as otherwise expressly provided herein, any amount due from Lessee to Lessor (other than interest) which is not paid when due shall bear annual interest at eighteen percent (18%), but not to exceed the highest rate allowed by law, from the date such payment is due until paid, but the payment of such interest shall not excuse or cure the default. Such interest shall be in addition to, and not in lieu of, any damages payable to Lessor as a result of Lessee's failure to pay time to Lessor all amounts when and as required under this Lease.

### 31. JOINT AND SEVERAL LIABILITY

If more than one person is named as Lessee, the obligations of such persons are joint and several.



### 32. AUTHORITY

If Lessee executes this Lease as a corporation, Lessee does hereby covenant and warrant that Lessee is a duly authorized and existing corporation, that Lessee has and is qualified to do business in Texas, that Lessee has full right and authority to enter into this Lease, and that each person signing on behalf of Lessee was and is authorized to do so. If Lessee executes this Lease as a partnership, Lessee does hereby warrant that Lessee is a duly authorized and existing partnership, that Lessee, if a foreign partnership, is qualified to do business in Texas, Lessee has full right and authority to enter into this Lease, and that each person signing on behalf of Lessee was and is authorized to do so. If Lessee executes this Lease as a limited liability company, Lessee does hereby warrant that Lessee is a duly authorized and existing limited liability company, that Lessee is qualified to do business in Texas, Lessee has full right and authority to enter into this Lease, and that each person signing on behalf of Lessee was and is authorized to do so.

### 35. BANKRUPTCY

If this Lease is assigned to any person or entity pursuant to the provisions of the Federal Bankruptcy Code, Title 11 U.S.C. Section 101, et seq., as subsequently amended (the "Bankruptcy Code"), any and all monies or other considerations payable or otherwise to be delivered in connection with such assignment will be paid or delivered to Lessor (which shall include the cure of any existing monetary defaults by payment of same to Lessor and the cure of any non-monetary defaults by performance within ten (10) business days of the assumption of this Lease by the assignee), and will be and remain the exclusive property of Lessor and will not constitute property of Lessee within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Lessor's property under the preceding sentence not paid or delivered to Lessor will be held in trust for the benefit of Lessor and be promptly paid to or turned over to Lessor. For purposes of Section 365(f) (2) of the Bankruptcy Code "adequate assurances of future performance" will include, but not be limited to, net worth, and creditworthiness equal to that of Lessee on the date of this Lease. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, will be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee will upon demand execute and deliver to Lessor an instrument confirming such assumption.

### 36. WAIVER

The failure of Lessor at any time or times to require performance of any provision of this Lease shall not affect its right at a later time to enforce such provision. No waiver by Lessor of any condition, or of any breach of any covenant, agreement, representation or warranty contained in or implied under this Lease, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other covenant, agreement, representation or warranty. Lessor's consent to or approval of any act by Lessee requiring Lessor's consent or approval shall not be deemed to render unnecessary the obtaining of Lessor's consent to or approval of any subsequent act of Lessee. No act or thing done by Lessor or Lessor's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Leased Premises, unless done in writing signed by Lessor. The acceptance of any royalty or other payment by Lessor following a breach of this Lease by Lessee shall not constitute a waiver by Lessor of such breach or any other breach unless such waiver is expressly stated in writing signed by Lessor.

### 37. ENTIRE AGREEMENT

This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement, understanding or representation pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

### 38. INSURANCE

At all times while this Lease is in force, (a) Lessee shall carry and provide insurance in the amounts and as set forth on the Exhibit "B" attached hereto and made a part hereof, and (b) Lessee shall require all contractors engaged in work pertaining to the Leased Premises to comply with the Worker's Compensation Law of the State of Texas and to maintain liability insurance and other types of insurance in amounts which are typical and usual in the oil and gas exploration, development and transportation industry for oil and gas contractors. Lessee shall provide copies of such insurance policies or certificates of same to Lessor upon written request to Lessee.

### 39. POOLED UNIT OPERATIONS

As a result of land development in the vicinity of the Leased Premises, governmental rules or ordinances regarding well sites, and/or no use of the surface and other surface restrictions as may be set forth in this Lease and/or other leases in the vicinity, surface locations for well sites in the vicinity may be limited and Lessee may encounter difficulty securing surface location(s) for drilling, reworking or other operations. Therefore, since drilling, reworking or other operations are not allowed under this Lease and may be either restricted or not allowed on other leases in the vicinity, it is agreed that any such operations conducted at a surface location off of the Leased Premises or off of lands with which Leased Premises is pooled in accordance with this Lease, provided that such operations are associated with a directional well for the purpose of drilling, reworking, producing or other operations under the Leased Premises or lands pooled therewith, shall for purposes of this Lease be deemed operations conducted on the Leased Premises. Nothing contained in this paragraph is intended to modify any surface restrictions or pooling provisions or restrictions contained in this Lease, except as expressly stated.

EXECUTED on this the 6th day of October, 2008.

LESSOR:

COSTCO WHOLESALE CORPORATION

By: 

Name: Richard J. Olm

Title: Vice President Assistant Secretary

LESSEE:

VARGAS ENERGY LTD., A TEXAS LIMITED  
PARTNERSHIP BY PLOVER PRODUCTION COMPANY, LLC

By: 

Name: Crawford Edwards

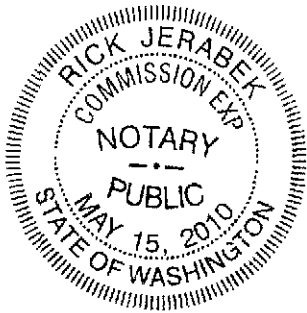
Its: President

STATE OF WASHINGTON

§  
§

COUNTY OF KING §

This instrument was acknowledged before me on OCTOBER 2, 2008, by Richard J. Olin, Vice President/Assistant Secretary of Costco Wholesale Corporation, a Washington corporation, as the act and deed of said corporation.



Rick Jerabek  
Notary Public for the State of Washington

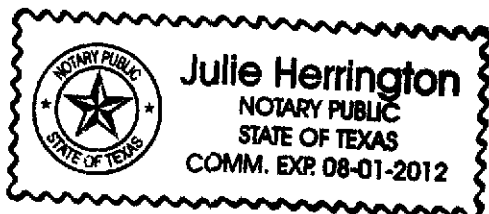
RICK JERABEK  
Printed Name of Notary  
My Commission Expires: 5-15-10

STATE OF TEXAS

§  
§  
§

COUNTY OF Tarrant

This instrument was acknowledged before me on November 3<sup>rd</sup>, 2008, by Crawford Edwards, President of ~~of Vargas Energy~~ Placer Production Company, LLC, ~~on behalf of said~~ Sole general partner of Vargas Energy Limited, a general partner of a limited partnership on behalf of said partnership.



Julie Herrington  
Notary Public for the State of Texas

Julie Herrington  
Printed Name of Notary  
My Commission Expires: 8/1/2012

## **EXHIBIT "A"**

Attached to and made a part of that certain Oil, Gas and Mineral Lease dated October 6, 2008, between Costco Wholesale Corporation ("Lessor") and Vargas Energy, Ltd. ("Lessee").

The Legal Description of Leased Premises is as follows:

Lot 4R1, Block 2, of the Replat of Lot 4, Block 2, of Cityview Addition, an Addition to the City of Fort Worth, Texas, according to the plat thereof recorded in Cabinet A, Slide 5186, Plat Records, Tarrant County, Texas.

**EXHIBIT "B"**  
**INSURANCE PROVISIONS**

Attached to and made a part of that certain Oil and Gas Lease dated effective as of the 6<sup>th</sup> day of October, 2008, by and between Costco Wholesale Corporation ("Lessor") and Vargas Energy, Ltd. ("Lessee"), covering the lands described in Exhibit A above.

1. General. To protect Lessor against liability, loss or expense arising from damage to property or injury to any person arising out of, in connection with or resulting from the exercise of its rights and privileges under this Lease, Lessee agrees during the term of the Lease to carry, at its own expense, with insurance companies authorized to do business in the State of Texas, insurance covering all of its operations pertaining to the Leased Premises, including any work performed on its behalf by contractors, subcontractors, and others, naming Lessor and related individuals and entities designated by Lessor as additional insureds. The insurance policies shall include coverage for comprehensive general liability for bodily injury and property damage, blowout and loss of well coverage, and coverage for any damage to the environment, including coverage for the cost of clean up and remediation. The coverage shall be in the minimum amounts described below, and upon written request, Lessee shall furnish a certificate from the issuing insurance company or companies evidencing the coverage:

A. Workmen's Compensation and Employees Liability Insurance to cover and include any liability (up to the maximum recoverable under applicable statutes) under or for the workmen's compensation laws of the state of Texas, including provisions that claims *in rem* will be treated as *in personam*;

B. Automobile Liability with a minimum combined single limit of \$1,000,000 for Bodily Injury and Leased Premises Damage and including coverage for all owned, non-owned and leased vehicles;

C. Comprehensive General Liability Insurance, including contractual liability insuring the indemnity from Lessee to Lessor set forth in this Lease, with minimum Bodily Injury, Sickness or Death limits of one million dollars (\$1,000,000) each person and one million dollars (\$1,000,000) per occurrence and Leased Premises Loss or Damage limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate operations, protective, and products (including completed operations);

D. Umbrella Liability Insurance with a minimum limit of five million dollars (\$5,000,000) per occurrence;

E. Pollution and Clean-Up Liability Insurance with a minimum limit of five million dollars (\$5,000,000); and

F. Well Control and Extra Expense Insurance with a minimum limit of five million dollars (\$5,000,000).

2. Policy Requirements. All insurance policies shall:

A. Include coverage for those risks assumed under the Lease and this Exhibit B;

B. Provide for forty five (45) days prior written notice to Lessor of the cancellation, expiration or reduction of coverage under, or a material change in, any policy;

C. Contain waivers of subrogation and right of recovery by Lessee's insurance underwriters against Lessor for injuries, death, losses or damages covered by those policies: and

D. Secure for Lessor the status of additional insured under the policy.

3. Certificates of Insurance. Upon written request, Lessee shall furnish Lessor with Lessee's certificates of insurance (on ACCORD form 27) evidencing the above-described coverages. Thereafter, Lessee shall provide its certificates of insurance at least thirty (30) days prior to the earlier of (1) the expiration of previously certificated insurance coverage or (2) the occurrence of any event for which prior notice is required by the terms of this Exhibit B. In lieu of providing its certificates of insurance, Lessee may provide copies of applicable insurance policies. To the extent that any of the insurance requirements of this Exhibit B are not evidenced by Lessee's certificates of insurance, Lessee represents and warrants that the requirements are nonetheless fulfilled by the applicable policies of insurance.

Return to: *Varco Energy Corp*  
Brett Austin  
4200 S. Hulen, Suite 614  
Fort Worth, TX 76109



VARGAS ENERGY LTD  
BRETT AUSTIN  
4200 S HULEN STE 614  
FT WORTH TX 76109  
Submitter: DANNA G HOBBS

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SUZANNE HENDERSON  
TARRANT COUNTY CLERK  
TARRANT COUNTY COURTHOUSE  
100 WEST WEATHERFORD  
FORT WORTH, TX 76196-0401

**DO NOT DESTROY**  
**WARNING - THIS IS PART OF THE OFFICIAL RECORD.**

Filed For Registration: 11/12/2008 10:58 AM  
Instrument #: D208425185  
OPR 23 PGS \$100.00

By: \_\_\_\_\_



**D208425185**

ANY PROVISION WHICH RESTRICTS THE SALE, RENTAL OR USE  
OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR  
RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

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